IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7291 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T CORPN

Versus

KA PRAJAPATI

Appearance:

1. Special Civil Application No. 7291 of 1999

MRS VASAVDATTA BHATT for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/04/2002

ORAL JUDGEMENT

#. Heard Ms.Vasavdatt Bhatt, learned advocate appearing on behalf of the petitioner Corporation. Though notice of Rule has been served on the respondent workman, the respondent workman has remained absent in the present proceedings, nor any advocate seems to have been engaged

by the respondent workman on his behalf before this Court. Therefore, this matter is taken up for final hearing even in absence of the respondent workman.

#. The petitioner Corporation has challenged the award passed by the Industrial Tribunal in Reference [IT] No.314 / 1993 dated 16th December, 1998, wherein the Turbinal has set aside the punishment orders dated 6th May, 1990 and 21st September, 1992. At the time of issuing RULE, this Court has specifically refused interim relief on 23rd February, 2000. Learned advocate Ms.Vasavada Bhatt has submitted that the respondent workman had recovered the fare of Rs.10/- from four passengers and not issued the tickets till the time of checking. The respondent workman was served with the chargesheet. The alleged misconduct was found to have proved against the workman in departmental inquiry and therefore, initially the respondent workman was punished by the Corporation for stoppage of five increments with cumulative effect vide order dated 1st May, 1990. Thereafter, first appeal was filed by the workman which was rejected by the first appellate authority and thereafter, second appeal was preferred. The second appellate authority has modified the punishment imposed on the respondent workman by reducing the punishment of stoppage of five increments to three increments with permanent effect. This order of second appellate authority was challenged by the workman before the tribunal. Learned advocate Ms.Bhatt has submitted that on 26th September, 1989 the respondent workman as Conductor was on his duty on route Radhanpur to Bhabhar. Meanwhile, his bus was checked and at that time, four passengers were found without tickets while travelling Madpur to Ujwala and Rs.10/- was collected by the workman and not issued the tickets. Thereafter, chargesheet was served and ultimately punishment of stoppage of five increments was imposed by the competent authority. However, punishment imposed by the competent authority came to be reduced to stoppage of three increments with future effect by the second appellate authority. Perusal of the award impugned in this petition reflects that the Tribunal has given reasons in para-10 that explanation given by the Conductor is required to be accepted and at the time of checking even before the checking staff also, this contention was raised by the respondent workman explaining that initially he issued tickets passenger and thereafter passengers have continued with onwards journey to other destination. It was also pleaded by the workman that cash was not checked by the checking staff. However, this contention has been ignored by the competent authority. If cash was checked by the checking

staff at the relevant time, the result would have been otherwise, whether he has not recovered the fare or not. This aspect has been ignored by the checking staff or the competent authority. After considering the evidence on record, the tribunal has come to the conclusion that actually the burden is upon the reporter to prove the misconduct but there is not burden upon the workman to disprove the allegation. The method which has been adopted by the inquiry officer, is contrary to the law and therefore, ultimately the tribunal has come to the conclusion that the respondent conductor has issued the tickets of Rs.1.80 to four passengers and way bill was not examined by the inquiry officer. Therefore, considering all these aspects, the tribunal has come to the conclusion that as per the evidence before the inquiry officer, four tickets of Rs.1.80 ps. were given to the passengers who have boarded in the bus from Radhanpur by the conductor and this fact was not proved according to the way bill and therefore, the misconduct alleged against the workman was not found to have proved. Ultimately, the tribunal has set aside the punishment order.

#. I have perused the award passed by the tribunal and materials produced on record. The tribunal has given cogent reasons in support of the conclusion and according to my opinion, the Tribunal has not committed any error either of jurisdiction nor committed any procedural irregularity which in any way requires any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution. Therefore, there is no substance in the petition and same requires to be rejected. Thus, present petition is rejected accordingly. Rule discharged with no order as to costs.

Date : 22-4-2002 [H.K.Rathod, J.]

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